

PT 02-9

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**COOK COMMUNICATIONS
MINISTRIES,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0058
(99-45-0230)
P.I.N: 06-11-256-002**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Rodney D. Cavitt, attorney at law, on behalf of Cook Communications Ministries (hereinafter the “applicant”).

SYNOPSIS: This proceeding raises the issue of whether real estate identified by Kane County Parcel Index Number 06-11-256-002 (hereinafter the “subject property”) was “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the “Code”), during any part of the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Kane County Board of Review (hereinafter the “Board”) on January 13, 2000. The Board reviewed this complaint and recommended to the Illinois Department Of Revenue (hereinafter the “Department”) that the requested exemption be denied.

The Department accepted this recommendation by issuing a determination, dated July 20, 2000, which found that the subject property is not in exempt ownership and not

in exempt use. Applicant filed a timely appeal to this denial and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at hearing, I recommend that the Department's determination in this matter be affirmed.

FINDINGS OF FACT:

A. Preliminary Considerations

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Nos. 1 and 2.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 2.
3. The subject property is located at 450 N. Grove, Elgin, IL and improved with a 190,000 square foot printing facility. Dept. Ex. No. 1; Applicant Ex. No. 1; Tr. p. 12.

B. Applicant's Organizational Structure

4. Applicant was founded as a sole proprietorship by a Chicago area pastor, David C. Cook, in 1875. Tr. pp. 12-13.
5. Pastor Cook founded applicant in order to address what he saw as an increasing need to provide better printed materials for Christian education. *Id.*
6. Applicant remained a sole proprietorship from 1875 until it was incorporated as a for-profit corporation in 1884. It remained a for-profit corporation, with all of the stock being held by members of Pastor Cook's family, until establishment of the David C. Cook Foundation (hereinafter the "Foundation") in 1944. Tr. p. 13.

7. Pastor Cook's family began contributing stock to the Foundation shortly after it was founded. They continued to do so until 1950, when all of the stock formerly held by family members was transferred to the Foundation. Applicant Ex. No. 19; *Id.*
8. The Foundation was subsequently incorporated under the General Not For Profit Corporation Act of Illinois on September 16, 1963. The Foundation's organizational purposes were, per its original Articles of Incorporation, to encourage, promote and contribute to the advancement of the Christian religion and Christian education. Applicant Ex. No.5.
9. The Foundation became 100% owner of the David C. Cook Publishing Company, a for-profit corporation, (hereinafter the "Company") pursuant to a plan approved by the Foundation's Board of Directors on December 27, 1950. The Foundation undertook this acquisition with the intent of liquidating the Company's assets and transferring all or substantially all of the Company's assets to the Foundation. Applicant Ex. No. 19.
10. The Foundation was exempt from federal income tax under Section 501(a) of the Internal Revenue Code (hereinafter the "IRC"), as a religious organization described in Section 501(c) of the IRC, at the time of the acquisition. The Company, however, was not so exempt. *Id.*
11. The Foundation's management did not actually effectuate a liquidation and transfer plan immediately after the acquisition because of concerns that the Company's lack of exempt status could destroy that of the Foundation. Tr. p. 21-22.

12. On May 10, 1974, the Internal Revenue Service determined that the Company's lack of exempt status did not impair that of the Foundation because the Company was engaged in a business that was functionally related to the exempt religious purposes of the Foundation within the meaning of Section 4942(j)(4) of the IRC. Applicant Ex. No. 19.
13. The Internal Revenue Service later determined that the liquidation and transfer plan would not adversely affect the Foundation's exemption from federal income tax, provided that the execution thereof would not effectuate a material change in the Foundation's operations. *Id.*
14. Pursuant to this determination, the Foundation began implementing a liquidation and transfer plan in January of 1998. It continued with the implementation process until it liquidated the last of the Company's assets on July 16, 1999. Applicant Ex. No. 14; Tr. pp. 23-24.
15. All of the proceeds from the Company's liquidated assets were effectively transferred to the Foundation when the liquidation and transfer plan was fully executed. Tr. p. 24.
16. The Foundation changed its corporate name to "Cook Communications Ministries," the applicant herein, via an amendment to its original Articles of Incorporation dated August 22, 1994. Applicant Ex. No. 6.
17. Applicant's organizational purposes remained the same after its name was changed from "The David C. Cook Foundation" to "Cook Communications Ministries." Applicant Ex. No. 6; Tr. pp. 14-15.

D. Applicant's Financial Structure

18. Applicant operates on a fiscal year that runs from June 1 through May 31.

Applicant Ex. Nos. 9, 13.

19. Applicant's federal returns reveal that it received income from the following sources during its 1998 and 1999 fiscal years:

| SOURCE | TOTAL¹ | % of TOTAL² |
|--|-----------------------------|-------------------------------|
| Contributions | \$ 1,030,013.00 | 1% |
| Interest on Savings | \$ 3,485,693.00 | 4% |
| Gross Rents | \$ 208,746.00 | <1% |
| Net Loss From Sale of Non-Merchandise Assets | \$ (925,867.00) | <1% |
| Gross Profit From Publication Sales | \$ 76,048,499.00 | 92% |
| Royalties, List Sales | \$ 3,191,015.00 | 4% |
| Total Revenues | \$ 83,038,099.00 | 100% |

Applicant Ex. Nos. 9, 13.

20. Applicant's operating expenses for the same fiscal years were, per the federal returns, as follows:

| EXPENSE | TOTAL | % OF OPERATING EXPENSES | % OF TOTAL EXPENSES |
|----------------|--------------|--|------------------------------------|
|----------------|--------------|--|------------------------------------|

1. The figures shown on the above charts are derived from the Federal Returns admitted as Applicant Ex. Nos. 9 and 13. These statements present applicant's financial structure on the basis of fiscal, rather than calendar, years. The Property Tax Code, however, defines the term "year" as meaning "calendar year" (35 ILCS 200/1-155). Because applicant's fiscal year (June 1 through May 30) does not conform to a "calendar year" (January 1 through December 31), it is necessary to present applicant's fiscal structure on the basis of combined figures for its 1998 and 1999 fiscal years. Thus, for example, \$1,030,013.00 in total revenues from contributions is equal to the sum of \$411,610.00 + \$618,403.00, which are the amounts of revenue applicant received from contributions during its 1998 and 1999 fiscal years.

2. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the third column. Thus, \$1,030,013.00 / \$83,038,099.00 = 0.0124 (rounded four places past the decimal) or 1%.

| | | | |
|--|-------------------------|-------------|------------|
| Compensation of Officers, Trustees, Etc. | \$ 862,534.00 | 1% | 1% |
| Other Employee Salaries & Wages | \$ 34,212,581.00 | 44% | 42% |
| Pension Plans & Employee Benefits | \$ 5,597,330.00 | 7% | 7% |
| Legal Fees | \$ 323,992.00 | <1% | <1% |
| Accounting Fees | \$ 426,261.00 | 1% | 1% |
| Other Professional Fees | \$ 4,615,180.00 | 6% | 6% |
| Taxes | \$ 2,850,418.00 | 4% | 3% |
| Depreciation & Depletion | \$ 4,736,968.00 | 6% | 6% |
| Occupancy | \$ 3,924,288.00 | 5% | 5% |
| Travel, Conferences & Meetings | \$ 3,295,613.00 | 4% | 4% |
| Printing & Publications | \$ 11,061,488.00 | 14% | 14% |
| Other Expenses | \$ 6,161,125.00 | 8% | 8% |
| Total Operating Expenses | \$ 78,067,778.00 | 100% | 96% |

Id.

21. These operating expenses included the following compensation arrangements

for applicant's trustees and officers:

| POSITION | 1998 ANNUAL COMPENSATION | 1998 CONTRIBUTIONS TO EMPLOYEE BENEFIT PLANS | 1999 ANNUAL COMPENSATION | 1999 CONTRIBUTIONS TO EMPLOYEE BENEFIT PLANS |
|-----------|--------------------------|--|--------------------------|--|
| President | \$ 92,400.00 | \$ 8,900.00 | \$ 239,883.00 | \$ 5,000.00 |
| Secretary | \$ 58,410.00 | \$ 8,900.00 | \$ 175,090.00 | \$ 5,000.00 |
| Treasurer | \$ | \$ | \$ | \$ |

| | | | | |
|----------------------|-------------|----------|-------------|----------|
| | 56,100.00 | 8,900.00 | 149,151.00 | 5,000.00 |
| Trustee | \$ 5,000.00 | \$ 0.00 | \$ 5,000.00 | \$ 0.00 |
| Trustee | \$ 5,500.00 | \$ 0.00 | \$ 6,000.00 | \$ 0.00 |
| Trustee | \$ 5,000.00 | \$ 0.00 | \$ 5,000.00 | \$ 0.00 |
| Trustee | \$ 5,000.00 | \$ 0.00 | \$ 5,000.00 | \$ 0.00 |
| Trustee | \$ 5,000.00 | \$ 0.00 | \$ 6,000.00 | \$ 0.00 |
| Trustee | \$ 6,000.00 | \$ 0.00 | \$ 6,000.00 | \$ 0.00 |
| Trustee | \$ 6,000.00 | \$ 0.00 | \$ 3,500.00 | \$ 0.00 |
| Trustee ³ | | | \$ 5,000.00 | \$ 0.00 |
| Trustee | | | \$ 5,000.00 | \$ 0.00 |
| Trustee | | | \$ 5,000.00 | \$ 0.00 |
| Trustee | | | \$ 2,500.00 | \$ 0.00 |
| Trustee | | | \$ 0.00 | \$ 0.00 |

Id.

22. Applicant's program expenses, together with its total expenses and reconciliation for the period in question were as follows:

| EXPENSE | TOTAL | % OF PROGRAM EXPENSES | % OF TOTAL EXPENSES |
|-------------------------------------|-----------------|------------------------------|----------------------------|
| Program Expense | | | |
| Children at Risk | \$ 766,565.00 | 22% | 1% |
| Bibles & Christian Literature | \$ 1,163,308.00 | 34% | 1% |
| Discipleship | \$ 727,217.00 | 21% | 1% |
| International Publisher Development | \$ 770,911.00 | 22% | 1% |

3. Applicant had a greater number of trustees in its 1999 fiscal year than it did in its 1998 fiscal year. Applicant Ex. Nos. 9, 13.

| | | | |
|-------------------------------|------------------------|------|-----------|
| Total Program Expenses | \$ 3,428,001.00 | 100% | 4% |
| Total Expenses | | | |
| Total Operating Expenses | \$78,067,778.00 | N/A | 96% |
| Total Program Expenses | \$ 3,428,001.00 | N/A | 4% |
| Total Expenses | \$81,495,779.00 | N/A | 100% |
| RECONCILIATION: | | | |
| Total Revenues | \$ 83,038,099.00 | | |
| Total Expenses | \$ 81,495,779.00 - | | |
| Net Income | \$ 1,542,320.00 | | |

Id.

D. Applicant's Operations and Programs

23. Applicant's business affairs are governed by a Board of Trustees, which meets twice per year. Applicant Ex. No. 7; Tr. p. 41.

24. The trustees are paid \$2,5000 per meeting for attending each of the biannual board meetings. By custom, the trustees may give back or contribute half of each \$2,500.00 payment to applicant. However, they are not required to do so. Tr. p. 41.

25. Applicant operates four different but interrelated programs: (a) Children at Risk, that develops children's publications for Christian missionaries, who use the materials in connection with their work in underdeveloped countries; (b) Bibles and Christian Literature, that publishes Christian literature in 80 foreign languages so that it may be understood throughout the world; (c) Discipleship, that develops and produces teaching materials and related

curricula for use in churches and other Christian institutions worldwide; and,
(d) International Publisher Development, that provides training materials and experiences for Christian publishers in the international community. Applicant Ex. Nos. 9, 12, 13; Tr. pp. 17-19, 33-38.

26. Applicant is not affiliated with any particular Christian church *per se*, although the curricula it publishes are used in the Sunday schools of many different Christian denominations. Tr. pp. 14-15.

E. Ownership and Use Issues

27. The Company owned the subject property continuously from 1901 until it transferred its ownership therein to applicant in June of 1999. Applicant Ex. No. 3; Tr. p. 12.

28. The Company effectuated this transfer by means of a warrantee deed dated June 29, 1999.

29. The subject property is improved with a 190,000 square foot building, 30% of which is used for the printing and binding of applicant's Sunday school curriculum. All of the remaining 70% is used for shipping and warehousing of applicant's publications. Tr. p. 11.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1999 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property

does not qualify for such exemption under 35 **ILCS** 200/15-40 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-40 of the Property Tax Code 35 **ILCS** 200/1-1 *et seq.*, wherein “all property used exclusively for religious purposes, or used exclusively for school and religious purposes ... not leased or otherwise used with a view to a profit” is exempted from real estate taxation. 35 **ILCS** 200/15-40.

The word “exclusively” when used in Section 15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.” People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Here, the subject property was used for purposes that furthered applicant’s religious publishing enterprise throughout the tax year in question. Such publishing enterprises are not “religious” in the conventional sense because they lack the requisite association with places traditionally used for public worship, Sunday school or other

devotional instruction. People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, *supra*. They do nonetheless raise more contemporary questions as to whether publishing and distributing Christian-oriented publications constitutes a “religious” purpose within the meaning of Section 15-40.

Courts have sought to resolve the difficult and often complex issues associated with religious publishing enterprises by inquiring, in general terms, whether the nature of the entity’s business is indicative of: (a) an inherently “religious” undertaking with incidental commercial nuances (Congregational Sunday School and Publishing Society v. Board of Review, 290 Ill. 108 (1919); Inter-Varsity Christian Fellowship of the United States of America v. Hoffman, 62 Ill. App.3d 798 (2nd Dist 1978); Evangelical Teacher Training Association v. Novak, 118 Ill. App.3d 21 (2nd Dist. 1983)); or, (b) a commercial enterprise with secondary “religious” overtones. (Scripture Press Foundation v. Annunzio, 414 Ill. 339 (1953)).

Factors to be considered in making this multi-faceted analysis⁴ include, *inter alia*, whether: (a) those who manage, organize and/or bear direct responsibility for conducting

4. Some of these factors suggest application of the exemption pertaining to “institutions of public charity,” which appears in Section 15-65(a) of the Property Tax Code, 35 ILCS 200/15-65(a). Section 15-65(a) provides, in substance, that all property owned by “institutions of public charity,” is exempt from real estate taxation provided that it is “actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit[.]” 35 ILCS 200/15-65(a).

This exemption is technically distinct from the one that appears in Section 15-40 because it requires *both* exempt ownership and exempt use (Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968)), rather than exempt use alone. (People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, *supra*). However, the court in Evangelical Teacher Training Association v. Novak, *supra*, specifically recognized that these technical distinctions can often become blurred in the context of religious publishing by stating that:

the business are members of a duly constituted religious order. Evangelical Teacher Training Association, *supra*; (b) the means employed (i.e. publishing, distribution, etc.) directly further one or more substantial “religious” purposes for which the entity is organized. *id.*; Congregational Sunday School, *supra*; (c) the entity makes a regular practice of distributing its materials free of charge or at reduced cost to those in need. Evangelical Teacher Training Association, *supra*; (d) the prices the entity charges for distribution of its materials are indicative of a profit motive in that they are less than, equal to or greater than whatever cover production costs it incurs. Congregational Sunday School, *supra*; (e) the entity’s pricing scheme enables it to provide complimentary copies of its materials to those in need irrespective of their ability to pay. *id.*; (f) the entity applies any profit it receives from “business” operations toward free distributions or other endeavors which substantially further its “religious” purpose. *id.*; and, (g) granting the requested exemption would violate public policy by creating economic inequalities between media outlets that enjoy the competitive advantage of exempt status and those

While the analysis required for charitable purposes may not be identical in all situations with that applicable to the religious exemption, it is a fair inference from the authorities that many of the same factors may be common to both claims for exemption in determining whether a religious or secular purpose is being performed. Thus, in [Congregational Sunday School], the court noted, “they are so closely associated that we will discuss them together.” *Congregational Sunday School & Publishing Society v. Board of Review*, (1919) 290 Ill. 108, 112. See also, *Scripture Press Foundation v. Annunzio*, (1953) 414 Ill. 339, 357-58.

Evangelical Teacher Training Association v. Novak, *supra* at 26. (Citations as they appear in the original).

that do not. Evangelical Covenant Church of America v. City of Nome, 394 P. 2d 882 (1964).

The basic nature of this applicant's business is to publish and distribute materials that are used in Christian education. The content of these publications is protected by the first amendment of the United States Constitution. New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Miami Herald Publishing Co. v. Tornillo 418 U.S. 241 (1974); Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001). Therefore, although the State is constitutionally prohibited from inquiring into the "truth or verity" of that content, (United States v. Ballard, 322 U.S. 78, 86 (1944)), it is not barred from inquiring whether real estate utilized to produce such publications is "used exclusively for religious purposes" within the meaning of 35 ILCS 200/15-40 (Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763, 773-775 (4th Dist., 1987)).

The factors set forth above ensure that the analytical criteria for this inquiry are objective and content-neutral. Thus, application thereof to the present facts reveals that, on balance, applicant's operations are more consistent with those of a commercial enterprise than a religious undertaking. This is not to minimize the fact that applicant was founded by a Christian pastor or the Christian-oriented content of applicant's publications. Rather, it indicates that other aspects of applicant's operations are strongly demonstrative of a commercial enterprise.

For instance, applicant's primary source of revenues, gross profit from publication sales, is one common to commercial publishers. Furthermore, the fact that applicant's revenues from that source (\$76,048,499.00 or 92% of total revenues) exceed its revenues

In the interest of avoiding the confusion inherent in analyzing two technically distinct exemptions "together," I set forth the criteria courts have identified as being relevant to this hybrid analysis without

from contributions (1,030,013.00 or 1% of total revenues) by a full 91% is equally suggestive of a commercial venture. Therefore, it is reasonable to conclude that the subject property, wherein applicant conducts that venture, is used: (a) primarily for non-exempt commercial purposes; and, (b) only incidentally for “religious” purposes.

This is especially true because doubts exist as to whether applicant actually distributes its materials by any means *except* commercial sales. Such doubts, which stem from the fact that applicant derives its revenue almost entirely from the sale of its publications, must be resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). So must the evidentiary deficiency created by the absence of proof establishing that applicant itself makes any gratuitous distributions of the materials it publishes to those who cannot afford to pay. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985). Therefore, applicant has failed to prove that the mechanisms that it employs to distribute its publications are consistent with those of a “religious” undertaking.

Furthermore, applicant’s trustees also derive pecuniary benefit from the \$2,500.00 payments they receive for attending each board meeting. Applicant’s vice president of finance, David Hachtel, testified that it is customary, but not required, for each of the officers and trustees to give back or donate half of each \$2,500.00 payment to applicant. (Tr. p. 41). However, the record lacks evidence establishing that these payments constitute reasonable reimbursement for expenses incurred in furtherance of applicant’s business. Absent such evidence, I must conclude that it is the receipt of the payments themselves which cause the trustees to benefit from applicant’s enterprise. Therefore, the

making further reference to their technical source.

fact that the trustees may ultimately choose, on an individual and discretionary basis, to donate a portion of the payments they receive is irrelevant herein.

Moreover, the considerable salaries paid to applicant's president, \$92,400.00 during applicant's 1998 fiscal year and \$239,883.00 in its 1999 fiscal year, foreclose any possibility that applicant's operations are anything other than those of a for-profit commercial enterprise. Therefore, applicant should not be allowed to enjoy the competitive advantage of a property tax exemption for the subject property, wherein it conducts that enterprise. *Accord, Evangelical Covenant Church of America, supra.*

The fact that applicant transferred the last assets of its for-profit subsidiary, the Company, to itself through liquidation in July of 1999 does not alter any of the preceding conclusions. This transfer would entitle applicant to an exemption for that part of the 1999 assessment year which transpired after the transfer became effective⁵ only if it caused applicant's operations to become more consistent with those of a "religious" undertaking. However, the above analysis clearly indicates that applicant's operations remained primarily commercial throughout 1999. Therefore, the transfer of assets is not decisive herein.

5. See, Section 9-185 of the Property Tax Code, which provides in relevant part that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed.

35 ILCS 200/9-185.

What is decisive is that applicant's operations are more akin to those of a commercial publisher than a religious undertaking. Therefore, the Department's determination in this matter should be affirmed.

WHEREFORE, for the reasons set forth above, it is my recommendation that real estate identified by Kane County Parcel Index Number 06-11-256-002 not be exempt from 1999 real estate taxes under Section 15-40 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*, 15-40.

February 19, 2002

Date

Alan I. Marcus
Administrative Law Judge